



Date of Council Meeting: June 10, 2013

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Should the Town Council initiate an ordinance prohibiting the solicitation of donations from motor vehicles on town streets.

Staff Contact: Jeanette Irby, Town Attorney

Recommendation:

Issue: Should the Town Council initiate an ordinance prohibiting individuals or groups from soliciting donations in town streets and medians?

Fiscal Impact: None.

Background: In March, the Loudoun County Board of Supervisors passed an ordinance banning persons from soliciting contributions while in the county highways and medians. The new ordinance 440.04 states in pertinent part:

(b) No person shall solicit contributions, of any nature, from the occupants of motor vehicles on highways within the boundaries of the County, or on public roadways or medians. Any person who violates the provisions of this Ordinance shall be guilty of a traffic infraction.

Virginia Code Section 46.4-931, entitled, "Localities may prohibit or regulate distribution of handbills, etc., solicitation of contributions, and sale of merchandise or services on highways within their boundaries or on public roadways and medians", is the enabling statute which authorizes the Loudoun County ordinance. Many other localities have enacted a similar provision; the City of Richmond as well as the Town of Herndon. The state code does not make an exception for non-profit groups or charities. The Loudoun County Board of Supervisors, upon advice from the County Attorney and staff, did not make an exception for non-profits or charities.

Even though the state enabling statute is clear, Herndon was contacted by the ACLU with a request to repeal its ordinance on the grounds that the ordinance targets Hispanics. Similarly, the City of Charlottesville has recently been sued by the ACLU for its ordinance prohibiting solicitation on the Charlottesville mall. Ordinances restricting solicitation from public areas may be unconstitutional in that they restrict individuals' First Amendment right to free speech. The U.S. Supreme Court has held that the solicitation of charitable contributions is protected speech. Town streets, sidewalks and public areas are "traditional public forums" which enjoy the full protection of the First Amendment. However, even though solicitation is a protected right, it still may be limited, so long as any law limiting the same is narrowly tailored.

The state code section which enables localities to enact ordinances prohibiting solicitation in public roadways or medians is grounded in motor vehicle and pedestrian safety and makes no distinction between the types of individuals or groups that are prohibited from soliciting donations. For this

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reason, the state code statute appears to be constitutional. As a result, any ordinance enacted by the Leesburg Town Council must be content neutral to withstand a constitutional challenge.

Respectfully submitted,

Jeanette Irby, Town Attorney

Attachments: 1.) Loudoun County Ordinance 440.04
2.) Code of Virginia of 1950, as amended § 46.4-931



Loudoun County, Virginia

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At a public hearing of the Board of Supervisors of Loudoun County, Virginia, held in the County Government Center, Board of Supervisors' Meeting Room, 1 Harrison Street, S.E., Leesburg, Virginia, on Wednesday, March 13, 2013 at 6:00 p.m.

IN RE: AMENDMENT TO CHAPTER 440 OF THE CODIFIED ORDINANCE OF LOUDOUN COUNTY - PEDESTRIANS

Mr. Williams moved that the Board of Supervisors suspend the rules.

Seconded by Mrs. Volpe.

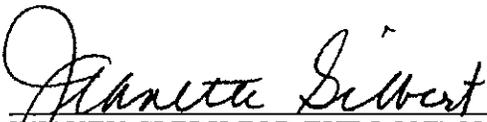
Voting on the Motion: Supervisors Buona, Delgaudio, Higgins, Volpe, Williams, and York – Yes; Supervisors Clarke and Letourneau – No; Supervisor Reid – Absent for the vote.

Mr. Williams moved that the Board of Supervisors adopt the proposed amendment, as set forth in Attachment 1 of the Staff Report, creating § 440.04 of the Codified Ordinances of Loudoun County.

Seconded by Mrs. Volpe.

Voting on the Motion: Supervisors Buona, Clarke, Delgaudio, Higgins, Letourneau, Reid, Volpe, Williams, and York – Yes.

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DEPUTY CLERK FOR THE LOUDOUN
COUNTY BOARD OF SUPERVISORS

440.04 SOLICITATION ON HIGHWAYS PROHIBITED.

(a) Definitions.

As used in this Chapter:

“Highway” shall mean the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular traffic in the County, including the streets and alleys, and the entire width between the boundary lines of all private roads or private streets that have are designated as highways pursuant to Chapter 420.03.

“Median” shall mean the area in the middle of any highway, designed to divide lanes of travel in opposing directions, including a lane in the center of a highway which is marked for use by turning traffic only. A median may be a raised concrete or grass strip.

“Motor vehicle” shall have the same meaning as defined in § 46.2-100 of the Code of Virginia, as amended.

- (b) No person shall solicit contributions, of any nature, from the occupants of motor vehicles on highways located within the boundaries of the County, or on public roadways or medians. Any person who violates the provisions of this Ordinance shall be guilty of a traffic infraction.

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§ 46.2-931. Localities may prohibit or regulate distribution of handbills, etc., solicitation of contributions, and sale of merchandise or services on highways within their boundaries or on public roadways and medians.

A. Any county, city, or town is hereby authorized to adopt an ordinance prohibiting or regulating:

1. The distribution of handbills, leaflets, bulletins, literature, advertisements, or similar material to the occupants of motor vehicles on highways located within its boundaries or on public roadways and medians;
2. The solicitation of contributions of any nature from the occupants of motor vehicles on highways located within its boundaries or on public roadways and medians; and
3. The sale of merchandise or services or the attempted sale of merchandise or services to the occupants of motor vehicles on highways located within its boundaries or on public roadways and medians.

B. Ordinances adopted pursuant to this section may provide that any person violating the provisions of such ordinances shall be guilty of a traffic infraction.

C. The Virginia Department of Transportation may regulate activities within such streets and highways under its jurisdiction, subject to regulations promulgated by the Commonwealth Transportation Board. Nothing in this section shall be construed to allow any locality to permit activities within any highway under the maintenance and operational jurisdiction of the Virginia Department of Transportation.

(1980, c. 113; 1989, c. 727; 2005, cc. [488](#), [541](#); 2008, cc. [120](#), [235](#), [310](#); 2009, cc. [422](#), [656](#), [722](#); 2010, cc. [378](#), [589](#).)

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